



Office of the Attorney General
State of Texas

June 7, 1991

DAN MORALES
ATTORNEY GENERAL

Mr. Bob Cannon
Superintendent
Perrin-Whitt Consolidated Independent School District
P. O. Box 39
Perrin, Texas 76075

OR91-263

Dear Mr. Cannon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11007.

You have received a request for a copy of a list of documents, including the Superintendent Appraisal and Professional Growth Plan. The plan consists of an evaluation of the superintendent and a proposal listing areas in which the administrator intends to improve his performance. You assert that the information is closed by section 3(a)(2), which excepts:

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts from institutions of higher education maintained in the personnel files of professional public school employees; provided, however, that nothing in this section shall be construed to exempt from disclosure the degree obtained and the curriculum on such transcripts of professional public school employees, and further provided that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

Information in a personnel file is confidential under section 3(a)(2) only if its release would cause an unwarranted invasion of privacy under the test articulated for common law privacy under section 3(a)(1) of the act. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the test for invasion of common law privacy, information may be withheld under section 3(a)(1) if the information contains highly intimate or embarrassing

facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

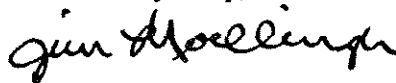
This office has held already that the disclosure of even subjective evaluations of an employee do not ordinarily constitute an invasion of privacy. *See* Attorney General Opinion JM-36 (1983); Open Records Decision No. 167 (1977). A public employee's job performance does not generally constitute his private affairs. Open Records Decision Nos. 470, 464 (1987). However, such evaluations may be protected under section 3(a)(11) of the act. *See* Open Records Decision No. 538 (1990).

When a governmental body requests an open records decision, it must state which exceptions apply to the information and the reasons why; if the governmental body fails to claim an exception, the exception is usually waived. Attorney General Opinion JM-672 (1987); Open Records Decision No. 252 (1980). However, because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor, this office will raise section 3(a)(1) on behalf of the governmental bodies. *Id.* The attorney general will not ordinarily raise other exceptions that might apply but that the governmental body has failed to claim. Open Records Decision Nos. 470, 455 (1987). In this instance, because you failed to claim section 3(a)(11), we cannot raise it on your behalf.

We have considered the exception you claimed, specifically section 3(a)(2), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 470 (1987), a copy of which is enclosed, resolves your request. For this reason, you must release the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-263.

Yours very truly,



Jim Moellinger

Assistant Attorney General
Opinion Committee

JM/mc

Ref.: ID# 11007, 11316, 11342

Enclosure: Open Records Decision No. 470 (1987)

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